

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

David Gonzalez, # 56168-054,

Petitioner,

v.

W.E. Mackelberg, *Warden at FCI Estill*,

Respondent.

Case No.: 2:20-cv-02058-SAL

OPINION AND ORDER

This matter is before the Court for review of the February 10, 2021 Report and Recommendation (“Report”) of United States Magistrate Judge Mary Gordon Baker, made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.). [ECF No. 14]. In the Report, the Magistrate Judge recommends that the Court substitute “Warden, FCI Schuylkill” as the proper respondent in this case and transfer this petition to the Middle District of Pennsylvania. *Id.* No party filed objections to the Report, and the time to do so has passed. *See id.*

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court is charged with making a *de novo* determination of only those portions of the Report that have been specifically objected to, and the Court may accept, reject, or modify the Report, in whole or in part. 28 U.S.C. § 636(b)(1). In the absence of objections, the Court is not required to provide an explanation for adopting the Report and must “only satisfy itself that there is no clear error on the face of the record

in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (citing Fed. R. Civ. P. 72 advisory committee’s note).

After a thorough review of the Report, the applicable law, and the record of this case in accordance with the above standard, the Court finds no clear error, adopts the Report, and incorporates the Report by reference herein. Accordingly, this Court hereby substitutes “Warden, FCI Schuylkill” as the proper respondent in this case and TRANSFERS this petition to the Middle District of Pennsylvania so that the proper court may determine whether Petitioner’s claims are cognizable under 28 U.S.C. § 2241.

IT IS SO ORDERED.

June 30, 2021
Florence, South Carolina

/s/Sherri A. Lydon
Sherri A. Lydon
United States District Judge